BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICARDO RAMIREZ, Claimant, vs. ARCONIC, INC., Employer, and INDEMNITY INS. CO. OF N. AMERICA, Insurance Carrier, Defendants.	File No. 20010579.02 ARBITRATION DECISION Head Notes: 1402.30, 2401, 2402, 2502, 2701

STATEMENT OF THE CASE

Claimant, Ricardo Ramirez, filed a petition in arbitration seeking workers' compensation benefits from Arconic, Inc. (Arconic), employer, and Indemnity Insurance Company of North America, insurer, both as defendants. This matter was heard on May 25, 2022, with a final submission date of July 1, 2022.

The record in this case consists of Joint Exhibits 1 through 6, Claimant's Exhibits 1 through 8, Defendants' Exhibits A through K, and the testimony of claimant.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

1. Whether claimant sustained carpal tunnel syndrome and cubital tunnel syndrome that arose out of and in the course of employment.

2. Whether claimant's claim for benefits is barred as untimely under Iowa Code section 85.23 or 85.26.

3. Whether the injury is a cause of a permanent disability; and if so,

4. The extent of claimant's entitlement to permanent partial disability benefits.

5. The commencement date of benefits.

6. Whether claimant is entitled to reimbursement of an independent medical evaluation (IME) under Iowa Code section 85.39.

7. Whether claimant is entitled to alternate medical care under Iowa Code section 85.27.

FINDINGS OF FACT

The claimant began his employment with Arconic in June of 2014. Claimant began in the IPS department. Claimant was an inspector in the IPS department, and his job required he inspect metal. (Hearing Transcript pages 8, 19-20)

Claimant worked as a quality inspector in the IPS department until November 2018. Claimant moved to the ingot plant at Arconic. At the time of hearing claimant worked as a lead operator in the ingot plant. (Tr., pp. 21-22, 38-39; Defendants' Exhibit J, page 32)

Claimant was a lead operator in the ingot plant. However, when an employee was absent, claimant filled in for other workers.

Claimant's prior medical history is relevant. On March 3, 2017, claimant was evaluated at the Veteran's Administration (VA) by Jennifer Eickstaedt, N.P. Claimant complained of left foot pain and pain and stiffness in his hands bilaterally. Claimant was assessed as having GERD and likely carpal tunnel syndrome of both hands. Claimant was told to use Naproxen and a wrist brace while doing repetitive activity. (Joint Exhibit 1, pp. 1-3)

Claimant testified he believed his symptoms in March of 2017 were from his job at Arconic. (Tr., p. 29; Ex. J, pp. 46-48) Claimant testified he began taking Naproxen and vitamin D supplements to help with symptoms in his hands. (Tr., pp. 31-32) He testified he was already using a left-hand wrist brace before the March 3, 2017, VA appointment. (Tr., pp. 29-31)

On November 8, 2017, claimant injured his right shoulder while pulling on wrapping material. On December 21, 2017, claimant underwent an MR arthrogram of the right shoulder. It showed a nearly circumferential labral tear, severe AC degenerative changes and a mild supraspinatus tendinopathy. (Ramirez v. Arconic, File number 5066573, page 2 (Arbitration Decision, January 30, 2020)) Claimant's claim for the right shoulder injury went to hearing on December 10, 2019. In a January 30, 2020, arbitration decision, claimant was found to have a 7 percent permanent impairment to the right upper extremity (Arbitration Decision page 5)

Claimant testified, that on November 27, 2019, he was "throwing alloy" of different weights when he experienced pain in his left upper extremity. Claimant said that as a lead operator for his department, when an employee was absent, he filled in

for that employee. On the date of injury claimant was gathering materials to make alloy. The job required heavy and repetitive lifting. (Tr., pp. 9-10; Claimant's Exhibit 2, page 5; Ex. F, p. 15; Ex. J, p. 34) Claimant testified that at the time of injury he was spending lots of time making alloy due to the absence of other employees. (Tr., p. 23) Claimant said the alloy weighed between 2-3 pounds and up to 60 pounds. He said he felt he "tweaked" his left elbow and the elbow was sore and numb. (Tr., pp. 9-13)

Claimant said he was reluctant to report the injury because of difficulty his employer gave him with a prior workers' comp injury. (Tr., pp. 13-14) (Ramirez v. Arconic, File Number 5066573) Claimant testified that other workers did not pursue workers' compensation claims because of how Arconic treated employees. (Tr., pp. 13-14, 50-51)

Claimant said he eventually reported his injury and received treatment with the Arconic medical staff.

On November 27, 2019, claimant was seen at the Arconic Medical Department. Claimant had a sore left elbow caused by throwing alloy of different weights. Claimant was given Aleve and told to ice his elbow. (JE 2, pp. 29-31)

On December 4, 2019, claimant was evaluated by Jennifer Kruse, M.S. Claimant injured his left elbow while throwing alloy. Claimant was given instructions regarding limiting lifting at work. (JE 2, p. 38)

On June 30, 2020, claimant underwent EMG/NCV testing performed by Robert Chesser, M.D. Testing showed claimant had moderate left carpal tunnel entrapment. (JE 5, pp. 76-77)

In an August 11, 2020 note, Theodore Koerner, M.D., with Arconic opined that claimant had a pre-existing, non-work-related carpal tunnel syndrome. This was based on records from the VA Hospital dated March 3, 2017, that assessed claimant as having bilateral carpal tunnel syndrome. (Ex. B)

On November 11, 2020, claimant was evaluated by Jonathan Winston, M.D., at ORA Orthopedics. Claimant had pain in his left upper extremity beginning on approximately November 27, 2019, after lifting and moving alloy repetitively. Claimant was assessed as having moderate carpal tunnel syndrome and an electrodiagnostically silent cubital tunnel syndrome. Dr. Winston recommended both a carpal tunnel and cubital tunnel release for treatment. (JE 6, p. 80)

On April 13, 2021, claimant underwent a physical with Benjamin Kolner, PA-C. Claimant was concerned with the carpal tunnel and ulnar nerve syndrome. Claimant wanted a second opinion regarding surgery. Claimant was referred to Dr. Crosmer (no first name given) for a second opinion regarding the carpal tunnel and ulnar nerve syndrome. (JE 3, pp. 72-74) Claimant testified in deposition he was unable to see Dr. Crosmer as she did not get claimant's medical records. (Ex. J, p. 40)

On June 16, 2021, claimant filed his petition regarding his work injury against Arconic.

In an April 21, 2022, report, Rick Garrels, M.D., gave his opinion of claimant's condition following an IME. Dr. Garrels opined that claimant's left elbow complaints appeared to be related to the November 27, 2019, injury. He opined that claimant had a ". . . well documented bilateral carpal tunnel syndrome from 2017. . ." and his carpal tunnel syndrome was not causally related to the November 27, 2019, event. He found claimant's carpal tunnel syndrome was not materially aggravated by the November 27, 2019, work injury. Dr. Garrels found claimant at MMI as of August 1, 2020. (Ex. F, pp. 13-14)

In an April 26, 2022 report, Sunil Bansal, M.D., gave his opinions regarding claimant's condition following an IME. Claimant had continued pain in the left elbow. Claimant had shooting pain from the left elbow to his ring and small finger. (Ex. 2, p. 8)

Dr. Bansal found that claimant had a left cubital tunnel syndrome caused by repetitive lifting and moving materials at Arconic. He opined that claimant was employed in repetitive job tasks at Arconic which were capable of increasing carpal tunnel pressure. (Ex. 2, pp. 9-10)

Dr. Bansal opined that if claimant did not seek further treatment, he was at MMI. Dr. Bansal opined that claimant had a 6 percent permanent impairment to the left elbow and a 3 percent permanent impairment due to the carpal tunnel syndrome. (Ex. 2, p. 11)

Dr. Bansal limited claimant to no lifting greater than 15 pounds on the left and no frequent gripping or twisting with the left wrist. (Ex. 2, pp. 11-12)

Claimant testified in deposition he intended to get treatment for his left upper extremity. (Ex. J, pp. 40-41) Claimant testified at hearing that he wanted to have the left elbow surgery. (Tr., p. 37)

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant sustained a carpal tunnel syndrome and a cubital tunnel syndrome to his left upper extremity that arose out of and in the course of employment on November 27, 2019. Defendants stipulate that claimant had an elbow injury, but denied claimant has an ulnar or cubital tunnel syndrome or a work-related carpal tunnel syndrome.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to

the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact-based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Claimant testified he worked as a lead operator. He testified that as a lead operator, when an employee was absent, he was required to fill in for the missing

worker. Claimant consistently testified that during the month of November of 2019, he filled in for a missing employee throwing material into a "pig" to make alloy. He testified he repeatedly lifted and tossed 60-pound bars of zinc and other materials during this period. He testified that while at work on November 27, 2019, while tossing alloy, he developed left elbow pain. (Tr., pp. 9-10, 23) Claimant's chronology of events of the injury is consistently repeated in medical records and claimant's deposition. (Ex. 2, p. 5; Ex. F, p. 15; Ex. J, p. 34)

Claimant has been evaluated by three experts regarding his left elbow injury. Dr. Garrels, the defendants' expert, saw claimant once for an IME. Dr. Garrels opined that claimant's left elbow complaint was related to the November 27, 2019 injury. (Ex. F, pp. 13-14)

Dr. Winston is an orthopedic surgeon. He evaluated claimant once for treatment. Dr. Winston assessed claimant as having electrodiagnostically silent cubital tunnel syndrome. He recommended a cubital tunnel release for treatment. (JE 6, p. 80)

Dr. Bansal also saw claimant for an IME. He also assessed claimant as having cubital tunnel syndrome of the left elbow caused by his work at Arconic. (Ex. 2, pp. 9-10)

Defendants argue, in their brief, that claimant has failed to carry his burden of proof he has a cubital tunnel syndrome in the left elbow caused by the November 27, 2019, injury as electrodiagnostic studies did not reveal a cubital tunnel syndrome. (Defendants' Post-Hearing Brief, pp. 12-13) No expert has offered an opinion supporting defendants' briefing argument. As noted, Dr. Winston diagnosed claimant as having an electrodiagnostically silent cubital tunnel syndrome. (JE 6, p. 80)

Both Dr. Winston and Dr. Bansal assessed claimant as having cubital tunnel syndrome caused by the November 27, 2019, date of injury. Dr. Garrels opined that claimant's left elbow condition was caused by the November 27, 2019, injury. Given this record, claimant has carried his burden of proof he sustained a left cubital tunnel syndrome caused by the November 27, 2019, date of injury.

Regarding the carpal tunnel syndrome, defendants contend because claimant was assessed as having bilateral carpal tunnel syndrome at the VA Clinic in March 2017, claimant's carpal tunnel syndrome is pre-existing and not caused or materially aggravated by the November 27, 2019, date of injury. (Defendants' Post-Hearing Brief, pp. 13-26)

As the record indicates, on March 3, 2017, claimant was evaluated at the VA. Claimant was assessed, at that time, as having bilateral carpal tunnel syndrome. He was told to use Naproxen. At that time claimant was already using a left wrist brace. (JE 1, pp. 1-3; Tr., pp. 31-32)

There is no record in evidence that claimant had complaints or sought further treatment for the left carpal tunnel syndrome until after November 27, 2019.

A number of experts have opined regarding causation of claimant's left carpal tunnel syndrome. Dr. Bansal's report acknowledges that claimant was evaluated for bilateral carpal tunnel syndrome in March 2017. Dr. Bansal opined that given the repetitive lifting, grabbing, turning, and twisting of his wrists at Arconic, this activity placed a significant stress on claimant's wrists causing claimant's carpal tunnel syndrome. (Ex. 2, p. 10)

Dr. Garrels evaluated claimant once for an IME. Both he and Dr. Koerner opined that claimant's left carpal tunnel syndrome was pre-existing and not work related based solely on the March 3, 2017, VA Hospital record. (JE 2, p. 63; Ex. F, p. 16) As noted, the record indicates claimant went approximately 2 years and 8 months from the March 3, 2017, VA visit until the date of injury in this case. During that time, there is no record in evidence that claimant complained of left wrist problems or sought treatment for a left wrist condition. Neither Dr. Garrels nor Dr. Koerner offer rationale for this lapse of time in their causation opinions.

The record indicates claimant was evaluated on March 3, 2017, for bilateral carpal tunnel syndrome. Claimant's date of injury in this case is November 27, 2019. There is no record in evidence that claimant complained or sought treatment for a left wrist condition during this nearly 3-year period. Claimant's job, at the time of injury, required repetitive lifting and tossing of heavy bars of zinc and other materials. Dr. Garrels offers no explanation why, if the left carpal tunnel syndrome is pre-existing, for the lapse of almost 3 years between treatment of a left wrist condition. Dr. Koerner's opinion regarding causation is also deficient regarding this discrepancy. As neither Dr. Garrels nor Dr. Koerner offer any explanation for their causation opinions, given a nearly 3-year lapse of time between the VA Hospital record and the date of injury, their opinions regarding causation of claimant's left carpal tunnel syndrome are found not convincing.

Claimant was injured at a job requiring repetitive lifting, gripping, and tossing of heavy metal bars and other objects. Dr. Bansal's opinion regarding causation is found convincing. Dr. Garrel's and Dr. Koerner's opinions regarding causation are found not convincing. Given this record, claimant has carried his burden of proof he sustained a left carpal tunnel syndrome on or about November 27, 2019, that arose out of and in the course of employment.

The next issue to be determined is whether claimant's claim for benefits as to the left carpal tunnel syndrome only, is barred by application of either Iowa Code section 85.23 or Iowa Code section 85.26.

Iowa Code section 85.26(1) requires an employee to bring an original proceeding for benefits within two years from the date of the occurrence of the injury if the employer has paid the employee no weekly indemnity benefits for the claimed injury. If the employer has paid the employee weekly benefits on account of the claimed injury, however, the employee must bring an original proceeding within three years from the date of last payment of weekly compensation benefits.

Failure to timely commence an action under the limitation statute is an affirmative defense which defendants must prove by a preponderance of the evidence. DeLong v. Iowa State Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940); Venenga v. John Deere Component Works, 498 N.W.2d 422 (Iowa Ct. App. 1993).

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact-based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

An original proceeding for benefits must be commenced within two years from the date of the occurrence of the injury for which benefits are claimed or within three years from the date of the last payment of weekly compensation benefits if benefits have been paid under Iowa Code section 86.13. Iowa Code section 85.26(1). Under the rule, the time during which a proceeding may be commenced does not begin to run until the claimant, as a reasonable person, should recognize the nature, seriousness, and probable compensable character of the condition. Failure to timely commence an action under the limitations statute is an affirmative defense, which defendants must prove by a preponderance of the evidence. Venenga v. John Deere Component Works, 498 N.W.2d 422 (Iowa Ct. App. 1993).

For a cumulative injury, the beginning of that period may not begin, under the discovery rule, until the worker knows the nature of the disability, the seriousness of the disability, and the probable compensable nature of the disability. Chapa v. John Deere Ottumwa Works, 652 N.W.2d 187 (Iowa 2002). See also Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842, 854–55 (Iowa 2009); Midwest Ambulance Serv. v. Ruud, 754 N.W.2d 860, 865 (Iowa 2008); Swartzendruber v. Schimmel, 613 N.W.2d 646 (Iowa 2000).

In this case, defendants have the burden of proof to show claimant knew the nature of his injury, the seriousness of the disability, and the probable compensable nature of the disability.

As detailed above, it is found claimant's injury was caused or materially aggravated by the November 27, 2019, work injury. The record indicates claimant gave

notice of his injury to his employer on November 27, 2019. (JE 2, pp. 29-31). On June 16, 2021, claimant filed his petition regarding the work injury. Given this record defendants have failed to carry their burden of proof claimant's claim for benefits is barred by application of either Iowa Code section 85.23 or Iowa Code section 85.26

The next issue to be determined is whether claimant's injury resulted in a permanent disability.

Iowa Code section 85.34(2), regarding permanent disabilities, reads in relevant parts:

> Compensation for permanent partial disability shall begin when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined by use of the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. . .

The record reflects that claimant has not received medical treatment for either his left carpal tunnel syndrome or his left cubital tunnel syndrome. Claimant testified he plans on getting medical treatment for his left upper extremity. He testified that he plans on getting the treatment as recommended by Dr. Winston. (Tr., p. 37; Ex. J, pp. 40-41) Given this record, it is found that claimant is not yet at MMI. As claimant is not yet at MMI, he cannot be evaluated for permanent disability. While claimant may have a permanent disability after he has the surgery or treatment recommended for his left upper extremity, the issue of permanent disability is not ripe to determine, at this time, as claimant has not yet reached MMI. As claimant has not yet reached MMI, the issues regarding the extent of claimant's entitlement to permanent partial disability benefits and commencement of benefits are also issues not ripe to determine at this time.

The next issue to be determined is whether claimant is entitled to reimbursement for Dr. Bansal's IME.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify

for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

The Supreme Court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an independent medical examination (IME), a claimant can still be reimbursed at hearing the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847.

In an August 11, 2020, opinion, Dr. Koerner, an expert retained by the employer, opined that claimant's carpal tunnel syndrome was not work related. (Ex. B) In an April 21, 2022, report, Dr. Garrels also opined that claimant's carpal tunnel syndrome was not work related and that claimant had no permanent impairment to the left elbow. (Ex. F, pp. 13-14) In an April 26, 2022, report, Dr. Bansal gave his opinions regarding claimant's permanent impairment. (Ex. 2) Given the chronology of these reports, defendants are liable for the expenses related to Dr. Bansal's IME.

The next issue to be determined is whether claimant is entitled to alternate medical care.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

Dr. Winston and Dr. Bansal both opined claimant required a left carpal tunnel and cubital tunnel release. Defendants have not offered claimant any medical care following the opinion of Dr. Koerner. Defendants' lack of care is found unreasonable. Given this record, claimant has carried his burden of proof that he is entitled to the surgical procedures as recommended by Dr. Winston and Dr. Bansal.

ORDER

THEREFORE IT IS ORDERED:

That defendants shall reimburse claimant's IME costs related to Dr. Bansal's IME.

That defendants shall authorize and pay for the surgical procedures as recommended by both Dr. Winston and Dr. Bansal.

That defendants shall pay costs.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this _____14th_____ day of September, 2022.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew Bribriesco (via WCES)

Troy Howell (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.